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| <b>ALBERT L. SATCHER, SR., Appellant</b> | ) |                                 |
|  | ) |                                 |
| <b>and</b>                               | ) | <b>Docket No. 04-1912</b>       |
|  | ) | <b>Issued: December 8, 2004</b> |
| <b>U.S. POSTAL SERVICE, BULK MAIL</b>    | ) |                                 |
| <b>CENTER, Atlanta, GA, Employer</b>     | ) |                                 |
|  | ) |                                 |

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

On July 26, 2004 appellant filed a timely appeal from the March 23, 2004 decision of the Office of Workers' Compensation Programs, denying his request for reconsideration without a review of the merits of his claim on the grounds that he neither raised substantive legal questions nor submitted new and relevant evidence. Because more than one year has elapsed between the last merit decision dated January 10, 2003 and the filing of this appeal on July 26, 2004 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

The issue is whether the Office properly refused to reopen appellant's claim for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

On August 22, 2002 appellant, then a 51-year-old modified loose mail clerk, filed a claim for compensation (Form CA-7) for the period August 13, 2002 through the filing date of his claim alleging that his lumbar disc disease of the spine was caused by factors of his employment.

In support of his claim, appellant submitted leave records for the period August 19 through September 6, 2002 and an August 24, 2002 attending physician's report from a neurosurgeon whose signature is illegible indicating that he sustained severe lumbar disc disease of the spine.

On October 31, 2002 appellant filed a claim alleging that he sustained a recurrence of disability on August 12, 2002. He attributed his recurrence of disability to reaching across the belt all the time at work and stated that he started to feel excessive pain. Appellant further stated that he had to see his physician more often and that his pain felt like the original pain he experienced.

The Office determined that appellant had alleged a new occupational disease injury and, thus, developed his claim as a new claim assigned number 06-0736455. By letter dated December 6, 2002, the Office requested that the employing establishment respond to appellant's allegations and provide information regarding his work. By letter of the same date, the Office advised appellant that his recurrence of disability claim had been converted into a claim for an occupational disease as it had been determined that he sustained a new injury. The Office further advised appellant that the evidence submitted was insufficient to establish his claim. He was informed about the type of factual and medical evidence he needed to submit to establish his claim.

In a response letter dated January 2, 2003, the employing establishment described the physical requirements of appellant's modified position and provided pictures of his workstation and a description of his position.

By decision dated January 10, 2003, the Office found the medical evidence of record insufficient to establish that appellant sustained a back injury while in the performance of duty.

In a letter dated March 8, 2004, appellant requested "reconsideration on case denied on January 2003 for compensation and time off work." He also requested reconsideration of his case assigned number 06-2072944 and noted that reconsideration paperwork could be found in his case assigned number 06-0736455 that was received by the Office on December 18, 2003.<sup>1</sup>

In a decision dated March 23, 2004, the Office denied appellant's request for a merit review of his claim on the grounds that he neither raised substantive legal questions nor submitted new and relevant evidence.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulation provides that a claimant must: (1) show

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<sup>1</sup> Appellant inquired about the status of his request for a schedule award, noting that his physician had submitted an evaluation conducted pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001). The Board, however, notes that the case record does not contain any evidence regarding appellant's schedule award claim, nor any final decision relative thereto.

<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

### **ANALYSIS**

In his March 8, 2004 letter, appellant requested “reconsideration on the case denied on January 2003 for compensation and time off work.” He did not submit any relevant and pertinent new evidence not previously considered by the Office in support of his request for reconsideration. In addition, he did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant’s claim for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>3</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>4</sup> *Id.* at § 10.607(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 23, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member